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History of The Initiative and Referendum in South Dakota

Department of History
Division of Legislative Reference



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INITIATIVE AND REFERENDUM IN SOUTH DAKOTA

The Initiative and Referendum in America originated in South Dak., being the invention of Rev. Robert W. Haire, a Catholic priest, for the past thirty four years a resident of the city of Aberdeen, who, during the time of the ascendancy of the Knights of Labor in 1885, proposed what he termed the "People's Legislature," involving the principles of the Initiative and Referendum. He agitated for this very extensively until the Swiss system was brought to his attention. The Farmers' Alliance movement followed quickly upon the Knights of Labor and Henry L. Loucks, of Watertown, South Dakota, became the President of the National Farmers' Alliance. He took up Father Haire's ideas and succeeded in getting them incorporated into the principles of the National Farmers' Alliance. The agitation for the adoption of the principles was continued until the Peoples party gained control of the South Dakota legislature in 1897, and submitted the present Initiative and Referendum provision to the state constitution, which was adopted by the people at the election held in November, 1898, by a vote of 23,816 for, to 16,483 against, out of a total of 75,204 votes cast at the election. That is to say, but 53 per cent of the voters at this election expressed their preference for or against the Initiative and Referendum.

The Constitutional provision thus adopted, is in the following form and was so drafted by Father Haire:

ARTICLE III.

Sec. 1.—The legislative power of the state shall be vested in a legislature which shall consist of a Senate and House of Representatives, except that the people expressly reserve to themselves the right to propose measures, which measures the legislature shall enact and submit to a vote of the electors of the State, and also the right to require that any laws which the legislature may have enacted shall be submitted to a vote of the electors of the State before going into effect (except such laws as may be necessary for the immediate preservation of the public peace, health or safety, support of the State Government and its existing public institutions.)

Provided, that not more than five per centum of the qualified electors of the state shall be required to invoke either the initiative or the referendum.

This section shall not be construed so as to deprive the Legislature or any member thereof of the right to propose any measure. The veto power of the Executive shall not be exercised as to measures referred to a vote of the people. This section shall apply to

municipalities. The enacting clause of all laws approved by vote of the electors of the State shall be: "Be it enacted by the people of South Dakota." The Legislature shall make suitable provisions for carrying into effect the provisions of this section.

Chapters 93 and 94 of the Laws of South Dakota for 1899, contain the necessary legislation to make the Initiative and Referendum provision of the Constitution effective.

No attempt was made to put this provision into practical use until after the adjournment of the legislature of 1901, when it was undertaken to refer a bill which had been passed by the legislature with the emergency clause attached, as provided by the constitution. The matter was carried to the Supreme Court and decided in the case of the State vs. Bacon, 14th South Dakota, page 394, wherein the court defines limitations of the provision, and held that an emergency clause is not referable, and that the legislature is the sole judge of an emergency.

The next attempt to invoke the use of the new provision was made by the friends of the primary election, just prior to the meeting of the legislature of 1905, when a primary election act was initiated by the requisite number of petitioners but the Senate of 1905 refused to obey the mandate of the Initiative and the bill was not submitted to the voters.

In the autumn of 1906, just prior to the meeting of the legislature of 1907, the temperance people initiated a county option bill which the legislature of 1907 submitted to the people. After the adjournment of the legislature, three other acts of that session were referred, so that at the election held in November, 1908, the people, for the first time, voted directly upon legislation. The act's were:

- County option.
- Reforming Divorce procedure.
- Prohibiting Sunday Amusements.
- Protection of Quail.

Three of these measures were approved but the county option bill, having failed of approval, the temperance people immediately initiated a new county option bill, which was submitted by the legislature of 1909; five other acts of that legislature were referred. Thus at the election of 1910 the people voted directly upon:

- County option.
- Electric headlights for locomotives.
- Empowering the Governor to remove incompetent or negligent officials.
- Licensing embalmers and undertakers.
- Apportionment of State into certain Congressional districts.
- A General Military Code.

All of the above acts failed to be approved by the people at the general election of 1910.

During the session of 1911 the Richards Primary election act, which has now come into national prominence, was initiated and submitted, and three acts of that session were referred, and were voted upon at the election of 1912. These were:

- The Richards primary election law.
- Electric headlights.
- Herd Law.
- County seat location law.

All of these acts were approved by the people.

In 1913 two initiated laws were submitted and one legislative act was referred to the people at the election in 1914 and all failed of approval. These were:

New Primary Election Act.

Removing restrictions from sale of intoxicants.

Amending the charter of the Northern Normal and Industrial School.

The legislature of 1913 submitted an amendment to the constitution leaving the percentage of voters required to petition an Initiative or Referendum in Municipalities to the legislative discretion, which was not approved.

The legislature of 1913 also enacted a law definitely prescribing the return to be made upon petitions for initiative or referendum and prohibiting the circulator of such petitions from receiving compensation therefor. It was claimed that there had been an abuse in these matters which the new law sought to correct. (Chap. 202, Laws of 1913).

The legislature of 1915 submitted three initiated acts and one legislative act has been referred, to be voted upon at the general election in 1916. These are:

Bank guaranty act initiated by the state bankers. Chap. 103.
Bank guaranty act initiated by citizens. Chap. 104.

A revision of the Richards primary initiated by Mr. Richards. Chap. 259.

An act permitting a verdict by five sixths of a common law jury. Chap. 241.

The legislature also passed, as an emergency measure, a Primary election act which repeals the initiated Richards primary law of 1912. The question at once was raised pertaining to the power of the legislature to repeal an act initiated and approved by the people, and the matter was taken into the Supreme Court of South Dakota, in the case of State ex rel Richards vs Whisman, 154 N. W., 707, where the court by unanimous opinion sustained the right of the legislature to repeal an initiated act. In this opinion the court reversed State vs. Bacon, 14th S. D. 394, holding that the emergency clause cannot defeat a referendum unless an actual emergency, as defined by the constitution, exists.

Mr. Richards appealed the portion of the decision in State vs. Whisman, which holds the right of the legislature to repeal an initiated act, to the Supreme Court of the United States. He promptly obtained a writ of error, bringing the decision of the South Dakota Supreme Court for review before the Supreme Court of the United States, upon the ground that it was in conflict with the provision of the federal constitution which guarantees to each state a republican form of government. No written opinion was filed in the case. On March 6th, 1916, the Supreme Court of the United States dismissed this writ of error, for "no jurisdiction" upon the principle of a long line of decisions of that court holding that the question of the existence of a republican form of government in the states is a political one to be determined by Congress, and not a judicial one

for the Courts. A later application for a re-hearing was refused by the Supreme Court of the United States.

It is perhaps without the mission of this division to express an opinion upon the success of the Initiative and Referendum in South Dakota. From the facts above stated the reader can readily reach his own conclusion, but it may be noted that voters have not exercised very careful discrimination pertaining to the merits of acts initiated and referred. Usually one popular measure will carry the approval of all submitted measures at that election and an unpopular one will seal the doom of all its running mates. An affirmative or a negative psychology appears to control the situation and as popularly stated, we have either "vote yes" or "vote no" elections.

July 1st, 1916.

I. AND R. STATISTICS

Table showing title of Initiated or Referred acts, of South Dakota; the year such were passed by the legislature; the chapter number in session laws of that year; the year of the election when such measure was voted upon; number voting for the measure, number voting against it; figures by which it was carried or defeated; the total vote cast on governor that election, being considered total election vote; and the per cent of the total election vote which was cast on the Initiated or Referred Law. Asterisk shows law was initiated;—others were referred.

TITLE	Year Passed	Chap. No.	Year Voted	Votes for	Votes against	Carried by	Defeated by	Total Vote on Governor	Per cent of Total Vote on I. or R. Act.
1. * Temperance county option	1907	179	1908	39,075	41,405	21,417	2,330	113,904	70
2. Divorce reform	1907	132	1908	60,211	38,794	33,066	...	113,904	86
3. Protection of quail	1907	158	1908	65,340	32,274	33,066	...	113,904	85
4. Sunday amusements	1907	234	1908	48,378	48,006	372	...	113,904	84
5. * Temperance county option	1909	30	1910	42,416	55,372	...	22,956	105,812	92
6. Electric headlights	1909	27	1910	37,914	49,938	...	12,024	105,812	83
7. Incompetent officials	1909	107	1910	32,160	52,152	...	19,992	105,812	79
8. Embalmers licensed	1909	211	1910	34,560	49,496	...	14,936	105,812	79
9. Congressional districts	1909	223	1910	26,918	48,883	...	21,965	105,812	71
10. Military Code	1909	52	1910	17,852	57,440	...	39,588	105,812	71
11. * Richards primary law	1911	201	1912	58,139	33,256	24,883	...	117,828	77
12. Electric Headlights	1911	213	1912	93,136	20,523	72,613	...	117,828	96
13. Free Range closed	1911	254	1912	56,782	30,643	26,139	...	117,828	74
14. County seat location	1911	112	1912	49,373	27,179	22,194	...	117,828	65
15. * Primary election	1913	197	1914	37,106	44,697	...	7,591	98,141	81
16. * Liquor regulation	1913	255	1914	38,000	51,779	...	13,779	98,141	90
17. Northern Normal charter	1913	184	1914	27,538	49,382	...	21,382	98,141	78

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ADDENDUM.

On September 12, 1885, Hon. W. H. Lyon, of Sioux Falls, sent the following petition to the Constitutional Convention then sitting in his city. This petition establishes Mr. Lyon as a pioneer in the movement for the referendum:

"I respectfully request that this convention incorporate in this constitution a provision that all appropriation bills for new public institutions and permanent improvements to existing institutions, and all laws of general interest to the people, should be drafted by the legislature and submitted for the people to enact or reject, at annual or biennial elections, and that the legislature be given only the power to pass appropriation bills for the ordinary running expenses of the state, and to enact necessary laws of a local, special and private nature, that cannot well be provided for in general acts."